

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

HOMELAND INSURANCE COMPANY OF  
NEW YORK,

Plaintiff,

v.

CLINICAL PATHOLOGY  
LABORATORIES, INC. SONIC  
HEALTHCARE USA, INC., MEDLAB  
PATHOLOGY, SONIC HEALTHCARE  
(IRELAND) LIMITED, AND SONIC  
HEALTHCARE LIMITED.

Defendants.

CIVIL ACTION NO. 1:20-cv-783

**HOMELAND INSURANCE COMPANY OF NEW YORK'S RESPONSE TO  
DEFENDANTS' OBJECTION TO AND MOTION TO STRIKE HOMELAND'S  
DECLARATIONS SUBMITTED IN SUPPORT OF ITS REPLY BRIEFS**

The Court should overrule Defendants' objection and deny their motion to strike. At issue now are pleading-stage motions, not an evidentiary motion. Homeland submitted the application signature page for the Court's consideration because it concretely illustrates the type of evidence Homeland will be able to produce when the time comes for evidence-based decisions on (i) whether the Homeland policies already incorporate the 2016 Warranty Letter, and (ii) if not, whether they should be reformed to do so because such was the parties' intent. Defendants' objection and motion illustrate only that they are afraid of what the evidence will show—but that's a reason to grant Homeland's motions, rather than prematurely decide what Homeland can and cannot prove.

Defendants' cited authority does not help them. They cite a case addressing the impropriety of offering evidence for the first time in the reply brief in support of a motion for

summary judgment. But again, this is the pleading stage. The Court's focus is only on what Homeland might be able to prove, and the application signature pages helps illustrate that.

Nor is there an appropriate basis for a sur-reply. The application signature page illustrates what evidence Homeland will be able to provide, but it is not essential to the Court's pleading-stage decision. It is enough that Homeland has alleged a plausible basis to conclude that the policies incorporate the Warranty Letter or should be reformed to do so.

Respectfully submitted this 7th day of July, 2021.

*/s/ John T. Brooks*  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of this document was served upon counsel of record for all parties who have made an appearance in this case at the addresses indicated by CM/ECF electronic notification on this 7th day of July 2021. I declare under penalty of perjury that the foregoing is true and correct.

*/s/ John T. Brooks*

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